

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- x
NICHOLAS ALBERTSON, GRIFFIN EPSTEIN,
GABRIELLE LANG, JENNY ESQUIVEL, AND
JEFFREY MILLER,

ANSWER

Plaintiff, 05 CV 7692 (KMK) (JCF)

-against-

THE CITY OF NEW YORK, a municipal entity, NEW YORK CITY POLICE DEPARTMENT, MICHAEL BLOOMBERG, Mayor of the City of New York, JOSEPH ESPOSITO, Chief of the New York City Police Department, RAYMOND KELLY, New York City Police Commissioner, JOHN J. COLGAN, Deputy Chief and Commanding Officer at the Pier #57 Detention Facility, THOMAS GRAHAM, Commanding Officer of the New York City Police Department Disorders Control Unit, BRUCE SMOLKA, Assistant Chief in the New York City Police Department and in Patrol Borough Manhattan South, and TERRENCE MONAHAN, Assistant Chief in the New York City Police Department, and the Chief of the Bronx Borough Command; NEW YORK CITY POLICE SUPERVISORS AND COMMANDERS "RICHARD ROES", NEW YORK CITY POLICE OFFICERS "JOHN DOES" and "SALLY ROES"; NEW YORK CITY POLICE OFFICER JAMES CONNOLLY, NEW YORK CITY POLICE OFFICER DENISE ROSE-HINKSMAN, NEW YORK CITY POLICE OFFICER TYREE FISHER; NEW YORK CITY POLICE DETECTIVE VICTOR LEBRON, individually and in their official capacities, jointly and severally,

Defendants.

----- x
Defendants City of New York, the New York City Police Department, Michael Bloomberg, Joseph Esposito, Raymond Kelly, John Colgan, Thomas Graham, Bruce Smolka,

Terrence Monahan, Tyree Fisher, and Victor Lebron by their attorney, Michael A. Cardozo, Corporation Counsel for the City of New York, for their answer to plaintiffs' Complaint, respectfully allege as follows:

AS TO THE "INTRODUCTION"

1. Defendants deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiffs purport to bring this action as stated therein.
2. Defendants deny the allegations set forth in paragraph "2" of the Complaint, except admit that plaintiffs purport to bring this action as stated therein.
3. Defendants deny the allegations set forth in paragraph "3" of the Complaint.
4. Defendants deny the allegations set forth in paragraph "4" of the Complaint, except admit that plaintiffs purport to bring this action as stated therein.
5. Defendants deny the allegations set forth in paragraph "5" of the Complaint, except admit that plaintiffs purport to bring this action as stated therein.
6. Defendants deny the allegations set forth in paragraph "6" of the Complaint, except admit that plaintiffs purport to seek the relief as stated therein.

AS TO "JURISDICTION"

7. Defendants deny the allegations set forth in paragraph "7" of the Complaint, except admit that plaintiffs purport to invoke the Court's jurisdiction as stated therein.

8. Defendants deny the allegations set forth in paragraph “8” of the Complaint, except admit that plaintiffs purport to invoke the Court’s supplemental jurisdiction as stated therein.

AS TO “VENUE”

9. Defendants deny the allegations set forth in paragraph “9” of the Complaint, except admit that plaintiffs purport that venue is proper.

AS TO “JURY TRIAL DEMANDED”

10. Defendants state that paragraph “10” contains no averments of fact and, accordingly, no response is required, except defendants admit that plaintiffs demand a trial by jury.

AS TO “CONDITION PRECEDENT”

11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “11” of the Complaint.

12. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the Complaint.

AS TO “PARTIES”

13. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Complaint.

14. Admit the allegations set forth in paragraph “10” of the Complaint.

15. Deny the allegations set forth in paragraph “15” of the Complaint, except admit that Michael Bloomberg is the Mayor of the City of New York.

16. Deny the allegations set forth in paragraph “16” of the Complaint, except admit that defendants Joseph Esposito, Raymond Kelly, John Colgan, Thomas Graham, Bruce Smolka, and Terrence Monahan are members of the New York City Police Department (“NYPD”), and that plaintiff purports to sue them in their individual and official capacities.

17. Deny the allegations set forth in paragraph “17” of the complaint.

18. Defendants state that the allegations set forth in paragraph “18” of the complaint state conclusions of law and, accordingly, no response is required.

19. Deny the allegations set forth in paragraph “19” of the complaint.

AS TO “FACTUAL ALLEGATIONS”

20. Deny the allegations set forth in paragraph “20” of the Complaint, except admit that the Republican National Convention was held in New York City in late August/early September 2004.

21. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “21” of the Complaint.

22. Defendants deny the allegations set forth in paragraph “22” of the Complaint.

23. Defendants deny the allegations set forth in paragraph “23” of the Complaint.

24. Defendants deny the allegations set forth in paragraph “24” of the Complaint.

25. Defendants deny the allegations set forth in paragraph “25” of the Complaint.
26. Defendants deny the allegations set forth in paragraph “26” of the Complaint.
27. Defendants deny the allegations set forth in paragraph “27” of the Complaint.
28. Defendants deny the allegations set forth in paragraph “28” of the Complaint.
29. Defendants deny the allegations set forth in paragraph “29” of the Complaint.
30. Defendants deny the allegations set forth in paragraph “30” of the Complaint.
31. Defendants deny the allegations set forth in paragraph “31” of the Complaint.
32. Defendants deny the allegations set forth in paragraph “32” of the Complaint.
33. Defendants deny the allegations set forth in paragraph “33” of the Complaint.
34. Defendants deny the allegations set forth in paragraph “34” of the Complaint.
35. Defendants deny the allegations set forth in paragraph “35” of the Complaint.
36. Defendants deny the allegations set forth in paragraph “36” of the Complaint.
37. Defendants deny the allegations set forth in paragraph “37” of the Complaint.
38. Defendants deny the allegations set forth in paragraph “38” of the Complaint.
39. Defendants deny the allegations set forth in paragraph “38” of the Complaint.
40. Defendants deny the allegations set forth in paragraph “40” of the Complaint.

AS TO THE “FACTS UNIQUE TO EACH PLAINTIFF”

41. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “41” of the Complaint.

42. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “42” of the Complaint.

43. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43” of the Complaint.

44. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44” of the Complaint.

45. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “45” of the Complaint.

46. Defendants deny the allegations set forth in paragraph “46” of the Complaint.

47. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the Complaint.

48. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “48” of the Complaint.

49. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “49” of the Complaint.

50. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “50” of the Complaint.

51. Defendants deny the allegations set forth in paragraph “51” of the Complaint.

52. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “52” of the Complaint.

53. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “53” of the Complaint.

54. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “54” of the Complaint.

55. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “55” of the Complaint.

56. Defendants deny the allegations set forth in paragraph “56” of the Complaint.

57. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “57” of the Complaint.

58. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “58” of the Complaint.

59. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “59” of the Complaint.

60. Defendants deny the allegations set forth in paragraph “60” of the Complaint.

61. Defendants deny the allegations set forth in paragraph “61” of the Complaint.

62. Defendants deny the allegations set forth in paragraph “62” of the Complaint.

63. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “63” of the Complaint.

64. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “64” of the Complaint.

65. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “65” of the Complaint.

66. Defendants deny the allegations set forth in paragraph “66” of the Complaint.

67. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “67” of the Complaint.

68. Defendants deny the allegations set forth in paragraph “68” of the Complaint.

69. Defendants deny the allegations set forth in paragraph “69” of the Complaint.

70. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “70” of the Complaint.

71. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “71” of the Complaint.

72. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “72” of the Complaint.

73. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “73” of the Complaint.

74. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “74” of the Complaint.

75. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “75” of the Complaint.

76. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “76” of the Complaint.

77. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “77” of the Complaint.

78. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “78” of the Complaint.

79. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “79” of the Complaint.”

80. Defendants deny the allegations set forth in paragraph “80” of the Complaint.

81. Defendants deny the allegations set forth in paragraph “81” of the Complaint.

82. Defendants deny the allegations set forth in paragraph “82” of the Complaint.

83. Defendants deny the allegations set forth in paragraph “83” of the Complaint.

84. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “84” of the Complaint.”

85. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “85” of the Complaint.”

86. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “86” of the Complaint.”

87. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “87” of the Complaint.”

88. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “88” of the Complaint.”

89. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “89” of the Complaint.”

90. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “90” of the Complaint.”

91. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “91” of the Complaint.”

92. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “92” of the Complaint.”

93. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “93” of the Complaint.”

94. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “94” of the Complaint.”

95. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “95” of the Complaint.”

96. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “96” of the Complaint.”

97. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “97” of the Complaint.”

98. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “98” of the Complaint.”

99. Defendants deny the allegations set forth in paragraph “99” of the complaint.

100. Defendants deny the allegations set forth in paragraph “100” of the complaint.

101. Defendants deny the allegations set forth in paragraph “101” of the complaint.

102. Defendants deny the allegations set forth in paragraph “102” of the complaint.

103. Defendants deny the allegations set forth in paragraph “103” of the complaint.

104. Defendants deny the allegations set forth in paragraph “104” of the complaint.

105. Defendants deny the allegations set forth in paragraph “105” of the complaint.

106. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “106” of the Complaint.”

107. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “107” of the Complaint.”

108. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “108” of the Complaint.”

109. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “109” of the Complaint.”

110. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “110” of the Complaint.”

111. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “111” of the Complaint.”

112. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “112” of the Complaint.”

113. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “113” of the Complaint.”

114. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “114” of the Complaint.”

115. Defendants deny the allegations set forth in paragraph “115” of the complaint.

116. Defendants deny the allegations set forth in paragraph “116” of the complaint.

117. Defendants deny the allegations set forth in paragraph “117” of the complaint.

AS TO THE "FIRST CAUSE OF ACTION"

118. In response to the allegations set forth in paragraph "118" of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

119. Defendants deny the allegations set forth in paragraph "119" of the complaint.

120. Defendants deny the allegations set forth in paragraph "120" of the complaint.

121. Defendants deny the allegations set forth in paragraph "121" of the complaint.

122. Defendants deny the allegations set forth in paragraph "122" of the complaint.

AS TO THE "SECOND CAUSE OF ACTION"

123. In response to the allegations set forth in paragraph "123" of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

124. Defendants deny the allegations set forth in paragraph "124" of the complaint.

125. Defendants deny the allegations set forth in paragraph "125" of the complaint.

126. Defendants deny the allegations set forth in paragraph "126" of the complaint.

127. Defendants deny the allegations set forth in paragraph "127" of the complaint.

AS TO THE "THIRD CAUSE OF ACTION"

128. In response to the allegations set forth in paragraph “128” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

129. Defendants deny the allegations set forth in paragraph “129” of the Complaint.

130. Defendants deny the allegations set forth in paragraph “130” of the Complaint.

AS TO THE “FOURTH CAUSE OF ACTION”

131. In response to the allegations set forth in paragraph “131” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

132. Defendants deny the allegations set forth in paragraph “132” of the Complaint.

133. Defendants deny the allegations set forth in paragraph “133” of the Complaint.

AS TO THE “FIFTH CAUSE OF ACTION”

134. In response to the allegations set forth in paragraph “134” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

135. Defendants deny the allegations set forth in paragraph “135” of the Complaint.

136. Defendants deny the allegations set forth in paragraph “136” of the Complaint.

AS TO THE “SIXTH CAUSE OF ACTION”

137. In response to the allegations set forth in paragraph “137” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

138. Defendants deny the allegations set forth in paragraph “138” of the complaint.

139. Defendants deny the allegations set forth in paragraph “139” of the complaint.

140. Defendants deny the allegations set forth in paragraph “140” of the complaint.

141. Defendants deny the allegations set forth in paragraph “141” of the complaint.

AS TO THE “SEVENTH CAUSE OF ACTION”

142. In response to the allegations set forth in paragraph “142” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

143. Defendants deny the allegations set forth in paragraph “143” of the complaint.

144. Defendants deny the allegations set forth in paragraph “144” of the complaint.

145. Defendants deny the allegations set forth in paragraph “145” of the complaint.

AS TO THE “EIGHTH CAUSE OF ACTION”

146. In response to the allegations set forth in paragraph “146” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

147. Defendants deny the allegations set forth in paragraph “147” of the Complaint.

148. Defendants deny the allegations set forth in paragraph “148” of the Complaint.

AS TO THE “NINTH CAUSE OF ACTION”

149. In response to the allegations set forth in paragraph “149” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

150. Defendants deny the allegations set forth in paragraph “150” of the complaint.

151. Defendants deny the allegations set forth in paragraph “151” of the complaint.

152. Defendants deny the allegations set forth in paragraph “152” of the complaint.

153. Defendants deny the allegations set forth in paragraph “153” of the complaint.

AS TO THE “TENTH CAUSE OF ACTION”

154. In response to the allegations set forth in paragraph “154” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

155. Defendants deny the allegations set forth in paragraph “155” of the complaint.

156. Defendants deny the allegations set forth in paragraph “156” of the complaint.

157. Defendants deny the allegations set forth in paragraph “157” of the complaint.

158. Defendants deny the allegations set forth in paragraph “158” of the complaint.

AS TO THE “ELEVENTH CAUSE OF ACTION”

159. In response to the allegations set forth in paragraph “159” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

160. Defendants deny the allegations set forth in paragraph “160” of the Complaint.

161. Defendants deny the allegations set forth in paragraph “161” of the Complaint.

AS TO THE “ELEVENTH CAUSE OF ACTION”¹

162. In response to the allegations set forth in paragraph “162” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

163. Defendants deny the allegations set forth in paragraph “163” of the Complaint.

164. Defendants deny the allegations set forth in paragraph “164” of the Complaint.

AS TO THE “TWELFTH CAUSE OF ACTION”

165. In response to the allegations set forth in paragraph “165” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

166. Defendants deny the allegations set forth in paragraph “166” of the Complaint.

167. Defendants deny the allegations set forth in paragraph “167” of the Complaint.

AS TO THE “THIRTEENTH CAUSE OF ACTION”

¹ Plaintiffs’ complaint contains two “ELEVENTH” causes of action.

168. In response to the allegations set forth in paragraph “168” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

169. Defendants deny the allegations set forth in paragraph “169” of the complaint.

170. Defendants deny the allegations set forth in paragraph “170” of the complaint.

171. Defendants deny the allegations set forth in paragraph “171” of the complaint.

172. Defendants deny the allegations set forth in paragraph “172” of the complaint.

AS TO THE “FOURTEENTH CAUSE OF ACTION”

173. In response to the allegations set forth in paragraph “173” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

174. Defendants deny the allegations set forth in paragraph “174” of the Complaint.

175. Defendants deny the allegations set forth in paragraph “175” of the Complaint.

176. Defendants deny the allegations set forth in paragraph “176” of the complaint.

AS TO THE “FIFTEENTH CAUSE OF ACTION”

177. In response to the allegations set forth in paragraph “177” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

178. Defendants deny the allegations set forth in paragraph “178” of the Complaint.

179. Defendants deny the allegations set forth in paragraph “179” of the Complaint.

180. Defendants deny the allegations set forth in paragraph “180” of the Complaint.

AS TO THE “SIXTEENTH CAUSE OF ACTION”

181. In response to the allegations set forth in paragraph “181” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

182. Defendants deny the allegations set forth in paragraph “182” of the Complaint.

183. Defendants deny the allegations set forth in paragraph “183” of the Complaint.

AS TO THE “SEVENTEENTH CAUSE OF ACTION”

184. In response to the allegations set forth in paragraph “184” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

185. Defendants deny the allegations set forth in paragraph “185” of the Complaint.

186. Defendants deny the allegations set forth in paragraph “186” of the Complaint.

AS TO THE “EIGHTEENTH CAUSE OF ACTION”

187. In response to the allegations set forth in paragraph “187” of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

188. Defendants deny the allegations set forth in paragraph “188” of the Complaint.

189. Defendants deny the allegations set forth in the second paragraph “188” of the Complaint.²

FIRST AFFIRMATIVE DEFENSE

190. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

191. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

THIRD AFFIRMATIVE DEFENSE

192. Any injury alleged to have been sustained resulted from Plaintiffs’ own culpable or negligent conduct or the culpable or negligent conduct of others, and was not the proximate result of any act of the Defendants.

FOURTH AFFIRMATIVE DEFENSE

193. The actions of any police officers involved were justified by probable cause.

FIFTH AFFIRMATIVE DEFENSE

194. At all times relevant to the acts alleged in the Complaint, Defendant City of New York, its agents and officials, acted reasonably in the proper and lawful exercise of their discretion. Therefore, Defendant City is entitled to governmental immunity from liability.

² Plaintiffs’ complaint contains two paragraphs numbered “188”.

SIXTH AFFIRMATIVE DEFENSE

195. Punitive damages cannot be recovered as against the Defendant City of New York or the other Defendants and, if available, the amount of such damages shall be limited by applicable state and federal constitutional provisions, including due process, and other provisions of law.

SEVENTH AFFIRMATIVE DEFENSE

196. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion.

EIGHTH AFFIRMATIVE DEFENSE

197. Plaintiffs have not complied with the conditions precedent to suit.

NINTH AFFIRMATIVE DEFENSE

198. Plaintiffs provoked the incidents of which they complain.

TENTH AFFIRMATIVE DEFENSE

199. Defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

ELEVENTH AFFIRMATIVE DEFENSE

200. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver and estoppel.

TWELTH AFFIRMATIVE DEFENSE

201. Plaintiffs consented to the acts about which they complain.

THIRTEENTH AFFIRMATIVE DEFENSE

202. Plaintiffs failed to mitigate her damages.

FOURTEENTH AFFIRMATIVE DEFENSE

203. The New York City Police Department is not a sueable entity.

WHEREFORE, Defendants City of New York, the New York City Police Department, Michael Bloomberg, Joseph Esposito, Raymond Kelly, John Colgan, Thomas Graham, Bruce Smolka, Terrence Monahan, James Connolly, Denise Rose-Hinksman, Tyree Fisher, and Victor Lebron request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
November 21, 2005

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants City of New York, the
New York City Police Department, Michael
Bloomberg, Joseph Esposito, Raymond Kelly, John
Colgan, Thomas Graham, Bruce Smolka, Terrence
Monahan, Tyree Fisher, and Victor Lebron
100 Church Street, Room 3-190
New York, New York 10007
(212) 788-0786

By: /s/
Jed M. Weiss (JW 5293)
Assistant Corporation Counsel
Special Federal Litigation Division

TO:
Daniel Alterman, Esq.
Alterman & Boob
35 Worth Street
New York, New York 10013

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NICHOLAS ALBERTSON et al.

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

ANSWER

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007
Of Counsel: Jed M. Weiss

Tel: (212) 788-8683
NYCLIS No. 05 sf 021181

Due and timely service is hereby admitted.

New York, N.Y., 2005

..... Esq.

Attorney for City of New York